

AMENDED IN ASSEMBLY AUGUST 27, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN SENATE APRIL 16, 2001

SENATE BILL

No. 475

Introduced by Senator Escutia

(Coauthors: Assembly Members Jackson and Steinberg)

February 22, 2001

An act to amend Sections 639, 1281.6, 1281.9, and 1286.2 of, and to add Sections 640.5, 1281.85, and 1281.91 to, the Code of Civil Procedure, relating to dispute resolution.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Escutia. Dispute resolution: referees and arbitrators.

Existing law provides that when the parties to an action do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in certain cases.

This bill would specifically provide that the appointment shall be subject to the procedures specified in a provision of existing law.

Existing law requires the Judicial Council to collect specified information on the use of references in certain cases in which the parties do not consent to the appointment of a referee and to make a specified report thereof to the Legislature by January 1, 2003.

This bill would also require the Judicial Council to collect specified information from the trial courts on the use of referees in discovery matters whether appointed upon agreement of the parties or when the parties do not consent. Further, this bill would *extend the period to*

collect information and would require the Judicial Council to report thereon to the Legislature by ~~January 1, 2004~~ July 1, 2003.

Existing law establishes standards for arbitration.

This bill would require arbitrators to comply with ethical standards adopted by the Judicial Council beginning July 1, 2002. This bill would also require the Judicial Council, consistent with the standards established for arbitrators in the judicial arbitration program, to adopt ethics standards that address the disclosure of conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, the acceptance of gifts, and the establishment of future professional relationships. The bill would also specify the grounds upon which a proposed neutral arbitrator may be disqualified *and the procedure to do so including the form of the petition to disqualify.*

Existing law requires the court to vacate an arbitration award if the arbitrator, upon receipt of a timely demand, fails to disqualify himself or herself from the proceedings.

This bill would also require the courts to dismiss an arbitration award if the arbitrator failed to disclose, within the time required for disclosure, grounds for disqualification of which the arbitrator was then aware.

This bill would also make a declaration of legislative intent regarding the grounds for vacating arbitration awards.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 639 of the Code of Civil Procedure is
2 amended to read:

3 639. (a) When the parties do not consent, the court may, upon
4 the written motion of any party, or of its own motion, appoint a
5 referee in the following cases pursuant to the provisions of
6 subdivision (b) of Section 640:

7 (1) When the trial of an issue of fact requires the examination
8 of a long account on either side; in which case the referees may be
9 directed to hear and decide the whole issue, or report upon any
10 specific question of fact involved therein.

1 (2) When the taking of an account is necessary for the
2 information of the court before judgment, or for carrying a
3 judgment or order into effect.

4 (3) When a question of fact, other than upon the pleadings,
5 arises upon motion or otherwise, in any stage of the action.

6 (4) When it is necessary for the information of the court in a
7 special proceeding.

8 (5) When the court in any pending action determines that it is
9 necessary for the court to appoint a referee to hear and determine
10 any and all discovery motions and disputes relevant to discovery
11 in the action and to report findings and make a recommendation
12 thereon.

13 (b) In a discovery matter, a motion to disqualify an appointed
14 referee pursuant to Section 170.6 shall be made to the court by a
15 party either:

16 (A) Within 10 days after notice of the appointment, or if the
17 party has not yet appeared in the action, a motion shall be made
18 within 10 days after the appearance, if a discovery referee has been
19 appointed for all discovery purposes.

20 (B) At least five days before the date set for hearing, if the
21 referee assigned is known at least 10 days before the date set for
22 hearing and the discovery referee has been assigned only for
23 limited discovery purposes.

24 (c) When a referee is appointed pursuant to paragraph (5) of
25 subdivision (a), the order shall indicate whether the referee is
26 being appointed for all discovery purposes in the action.

27 (d) All appointments of referees pursuant to this section shall
28 be by written order and shall include the following:

29 (1) When the referee is appointed pursuant to paragraph (1),
30 (2), (3), or (4) of subdivision (a), a statement of the reason the
31 referee is being appointed.

32 (2) When the referee is appointed pursuant to paragraph (5) of
33 subdivision (a), the exceptional circumstances requiring the
34 reference, which must be specific to the circumstances of the
35 particular case.

36 (3) The subject matter or matters included in the reference.

37 (4) The name, business address, and telephone number of the
38 referee.

39 (5) The maximum hourly rate the referee may charge and, at the
40 request of any party, the maximum number of hours for which the

1 referee may charge. Upon the written application of any party or
2 the referee, the court may, for good cause shown, modify the
3 maximum number of hours subject to any findings as set forth in
4 paragraph (6).

5 (6) (A) Either a finding that no party has established an
6 economic inability to pay a pro rata share of the referee's fee or a
7 finding that one or more parties has established an economic
8 inability to pay a pro rata share of the referee's fees and that another
9 party has agreed voluntarily to pay that additional share of the
10 referee's fee. A court shall not appoint a referee at a cost to the
11 parties if neither of these findings is made.

12 (B) In determining whether a party has established an inability
13 to pay the referee's fees under subparagraph (A), the court shall
14 consider only the ability of the party, not the party's counsel, to pay
15 these fees. If a party is proceeding in forma pauperis, the party
16 shall be deemed by the court to have an economic inability to pay
17 the referee's fees. However, a determination of economic inability
18 to pay the fees shall not be limited to parties that proceed in forma
19 pauperis. For those parties who are not proceeding in forma
20 pauperis, the court, in determining whether a party has established
21 an inability to pay the fees, shall consider, among other things, the
22 estimated cost of the referral and the impact of the proposed fees
23 on the party's ability to proceed with the litigation.

24 (e) In any matter in which a referee is appointed pursuant to
25 paragraph (5) of subdivision (a), a copy of the order appointing the
26 referee shall be forwarded to the office of the presiding judge of
27 the court. The Judicial Council shall, by rule, collect information
28 on the use of these references and the reference fees charged to
29 litigants, and shall report thereon to the Legislature by ~~January~~
30 *July* 1, 2003. This subdivision shall become inoperative on
31 January 1, 2004.

32 SEC. 2. Section 640.5 is added to the Code of Civil Procedure,
33 to read:

34 640.5. It is the intent of the Legislature that the practice and
35 cost of referring discovery disputes to outside referees be
36 thoroughly reviewed. Therefore, in addition to the requirements of
37 subdivision (e) of Section 639, the Judicial Council shall collect
38 information from the trial courts on the use of referees in discovery
39 matters pursuant to either Sections 638 and 639. The collected data
40 shall include information on the number of referees, the cost to the

1 parties, and the time spent by the discovery referee. The Judicial
2 Council shall report thereon to the Legislature by ~~January 1, 2004~~
3 *July 1, 2003*.

4 SEC. 3. Section 1281.6 of the Code of Civil Procedure is
5 amended to read:

6 1281.6. If the arbitration agreement provides a method of
7 appointing an arbitrator, that method shall be followed. If the
8 arbitration agreement does not provide a method for appointing an
9 arbitrator, the parties to the agreement who seek arbitration and
10 against whom arbitration is sought may agree on a method of
11 appointing an arbitrator and that method shall be followed. In the
12 absence of an agreed method, or if the agreed method fails or for
13 any reason cannot be followed, or when an arbitrator appointed
14 fails to act and his or her successor has not been appointed, the
15 court, on petition of a party to the arbitration agreement, shall
16 appoint the arbitrator.

17 When a petition is made to the court to appoint a neutral
18 arbitrator, the court shall nominate five persons from lists of
19 persons supplied jointly by the parties to the arbitration or obtained
20 from a governmental agency concerned with arbitration or private
21 disinterested association concerned with arbitration. The parties to
22 the agreement who seek arbitration and against whom arbitration
23 is sought may within five days of receipt of notice of the nominees
24 from the court jointly select the arbitrator whether or not the
25 arbitrator is among the nominees. If the parties fail to select an
26 arbitrator within the five-day period, the court shall appoint the
27 arbitrator from the nominees.

28 SEC. 4. Section 1281.85 is added to the Code of Civil
29 Procedure, to read:

30 1281.85. Beginning July 1, 2002, a person serving as a neutral
31 arbitrator pursuant to an arbitration agreement shall comply with
32 the ethics standards for arbitrators adopted by the Judicial Council
33 pursuant to this section. The Judicial Council shall adopt ethical
34 standards for all neutral arbitrators effective July 1, 2002. These
35 standards shall be consistent with the standards established for
36 arbitrators in the judicial arbitration program and may expand but
37 ~~shall~~ *may* not limit the disclosure and disqualification
38 requirements established by this chapter. The standards shall
39 address the disclosure of interests, relationships, or affiliations that
40 may constitute conflicts of interest, including prior service as an

1 arbitrator or other dispute resolution neutral entity,
2 disqualifications, acceptance of gifts, and establishment of future
3 professional relationships.

4 SEC. 5. Section 1281.9 of the Code of Civil Procedure is
5 amended to read:

6 1281.9. (a) In any arbitration pursuant to an arbitration
7 agreement, when a person is to serve as a neutral arbitrator, the
8 proposed neutral arbitrator shall disclose all matters that could
9 cause a person aware of the facts to reasonably doubt the proposed
10 neutral arbitrator's ability to conduct the arbitration proceedings
11 impartially *entertain a doubt that the proposed neutral arbitrator*
12 *would be able to be impartial*, including ~~of all~~ all of the following:

13 (1) The existence of any ground specified in Section 170.1 for
14 disqualification of a judge.

15 (2) Any matters required to be disclosed by the ethics standards
16 for neutral arbitrators adopted by the Judicial Council pursuant to
17 this chapter.

18 (3) The names of the parties to all prior or pending
19 noncollective bargaining cases in which the proposed neutral
20 arbitrator served or is serving as a party arbitrator for any party to
21 the arbitration proceeding or for a lawyer for a party and the results
22 of each case arbitrated to conclusion, including the date of the
23 arbitration award, identification of the prevailing party, the names
24 of the parties' attorneys and the amount of monetary damages
25 awarded, if any. In order to preserve confidentiality, it shall be
26 sufficient to give the name of any party who is not a party to the
27 pending arbitration as "claimant" or "respondent" if the party is
28 an individual and not a business or corporate entity.

29 (4) The names of the parties to all prior or pending
30 noncollective bargaining cases involving any party to the
31 arbitration or lawyer for a party for which the proposed neutral
32 arbitrator served or is serving as neutral arbitrator, and the results
33 of each case arbitrated to conclusion, including the date of the
34 arbitration award, identification of the prevailing party, the names
35 of the parties' attorneys and the amount of monetary damages
36 awarded, if any. In order to preserve confidentiality, it shall be
37 sufficient to give the name of any party not a party to the pending
38 arbitration as "claimant" or "respondent" if the party is an
39 individual and not a business or corporate entity.



(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, “lawyer for a party” includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, “prior cases” means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, “any arbitration” does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SEC. 6. Section 1281.91 is added to the Code of Civil Procedure, to read:

1281.91. (a) A proposed neutral arbitrator shall be disqualified if he or she fails to comply with Section 1281.9 and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with Section 1281.9.

(b) (1) If the proposed neutral arbitrator complies with Section 1281.9, the proposed neutral arbitrator shall be disqualified on the basis of the disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after service of the disclosure statement.

(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any single arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

~~(c) Except as provided in subdivision (d), the~~ The right of a party to disqualify a proposed neutral arbitrator pursuant to this

1 section shall be waived if the party fails to serve the notice pursuant
2 to the times set forth in this section, unless the proposed nominee
3 or appointee makes a material omission or material
4 misrepresentation in his or her disclosure. ~~In~~ Except as provided
5 in subdivision (d), in no event may a notice of disqualification be
6 given after a hearing of any contested issue of fact relating to the
7 merits of the claim or after any ruling by the arbitrator regarding
8 any contested matter. Nothing in this subdivision shall limit the
9 right of a party to vacate an award pursuant to Section 1286.2, or
10 to disqualify an arbitrator pursuant to any other law or statute.

11 (d) If any ground specified in Section 170.1 exists, ~~an~~ a neutral
12 arbitrator shall disqualify himself or herself upon the demand of
13 any party made before the conclusion of the arbitration
14 proceeding. However, this subdivision does not apply to
15 arbitration proceedings conducted under a collective bargaining
16 agreement between employers and employees or their respective
17 representatives.

18 SEC. 7. Section 1286.2 of the Code of Civil Procedure is
19 amended to read:

20 1286.2. (a) Subject to Section 1286.4, the court shall vacate
21 the award if the court determines any of the following:

22 ~~(a)~~

23 (1) The award was procured by corruption, fraud or other
24 undue means.

25 ~~(b)~~

26 (2) There was corruption in any of the arbitrators.

27 ~~(c)~~

28 (3) The rights of the party were substantially prejudiced by
29 misconduct of a neutral arbitrator.

30 ~~(d)~~

31 (4) The arbitrators exceeded their powers and the award cannot
32 be corrected without affecting the merits of the decision upon the
33 controversy submitted.

34 ~~(e)~~

35 (5) The rights of the party were substantially prejudiced by the
36 refusal of the arbitrators to postpone the hearing upon sufficient
37 cause being shown therefor or by the refusal of the arbitrators to
38 hear evidence material to the controversy or by other conduct of
39 the arbitrators contrary to the provisions of this title.

40 ~~(f)~~

1 (6) An arbitrator making the award ~~was subject to~~
2 ~~disqualification upon grounds specified in Section 1281.9, but~~
3 either: ~~(1)~~ (A) failed to disclose within the time required for
4 disclosure a ground for disqualification of which the arbitrator was
5 then aware; or ~~(2)~~ (B) *was subject to disqualification upon grounds*
6 *specified in Section 1281.91 but failed upon receipt of timely*
7 *demand to disqualify himself or herself as required by that*
8 *provision. However, this subdivision does not apply to arbitration*
9 *proceedings conducted under a collective bargaining agreement*
10 *between employers and employees or between their respective*
11 *representatives.*

12 (b) *Petitions to vacate an arbitration award pursuant to*
13 *Section 1285 are subject to the provisions of Section 128.7.*

14 SEC. 8. *It is the intent of the Legislature that the grounds for*
15 *vacatur added by subparagraph (A) paragraph (6) of subdivision*
16 *(a) of Section 1286.2, is declarative of existing case law which*
17 *provides that an arbitration award may be vacated when a neutral*
18 *arbitrator fails to disclose a matter that might cause a reasonable*
19 *person to question the ability of the arbitrator to conduct the*
20 *arbitration proceeding impartially.*

